STATE OF MICHIGAN

COURT OF APPEALS

ALPINE VALLEY SKI AREA LEASING, INC. and SKIING UNLIMITED, INC.,	UNPUBLISHED November 21, 2006
Plaintiffs-Appellees,	
v	No. 260787 Oakland Circuit Court
RICHARD ZONER and BILL'S TREE & COMPANY, INC.,	LC No. 2003-050671-CZ
Defendants-Appellants.	

Before: Whitbeck, C.J., and Sawyer and Jansen, JJ.

PER CURIAM.

Defendants Richard Zoner and Bill's Tree & Company, Inc. appeal as of right the trial court's order denying their motion for summary disposition under MCR 2.116(C)(8) and (C)(10) and granting summary disposition for plaintiffs Alpine Valley Ski Area Leasing, Inc. and Skiing Unlimited, Inc. (collectively Alpine) pursuant to MCR 2.116(I)(2). Defendants also challenge the circuit court's orders awarding damages and case evaluation sanctions in Alpine's favor. We reverse the trial court's order granting summary disposition for Alpine and remand.

I. Basic Facts And Procedural History

This dispute involves the unauthorized removal of mature pine trees located on a 60-foot easement providing ingress and egress to Alpine's ski resort in White Lake, Michigan. According to Alpine, the trees provided an environment and ambience central to its business operations and maintained the look and feel of an Alpine resort. The easement is located on property owned by National City Bank and abuts property owned by defendant Richard Zoner. In early 2003, Zoner retained defendant Bill's Tree & Company, Inc., to remove a large number of trees located on his property. A smaller number of trees located on the easement were inadvertently removed. The trial court granted summary disposition for Alpine and denied summary disposition for defendants on the basis that Alpine, as the easement holder, had a right to recover damages for trespass onto the easement.

II. MCL 600.2919

Defendants assert that the trial court erred in granting Alpine summary disposition, arguing that they may not be held liable under MCL 600.2919 because that section limits recovery to an owner of property rather than a mere easement holder.

A. Standard Of Review

A "trial court properly grants summary disposition to the opposing party under MCR 2.116(I)(2) if the court determines that the opposing party, rather than the moving party, is entitled to judgment as a matter of law."[1] We review de novo a trial court's decision on a motion for summary disposition.[2] Further, we review de novo issues of statutory interpretation.[3]

B. Statutory Interpretation

In its complaint, Alpine sought treble damages pursuant to MCL 600.2919, which provides in pertinent part:

> (1) Any person who:
>
> (a) cuts down or carries off any wood, underwood, *trees*, or timber or despoils or injures any trees on another's lands . . . .
>
> * * *
>
> (c) . . . *without permission of the owner of the lands . . . is liable to the owner of the land* or the public corporation for 3 times the amount of actual damages. [Emphasis added.]

By its plain language, MCL 600.2919 limits liability to an "owner" of land. Therefore, we must determine whether an easement holder is an "owner" within the meaning of the statute.

This Court had previously interpreted MCL 600.2919(1) in the context of an easement holder. In *Tittiger v Johnson*, this Court determined that the statute "is not applicable in the case of an easement."[4] This Court stated:

> The inapplicability of MCL 600.2919. . . in the case of an easement is reaffirmed by the language used by the Legislature. Throughout subsections (1)(a)-(c), reference is made to "another's land." The statute requires that

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[1] *Washburn v Michailoff*, 240 Mich App 669, 672; 613 NW2d 405 (2000).

[2] *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

[3] *Franchino v Franchino*, 263 Mich App 172, 183; 687 NW2d 620 (2004).

[4] *Tittiger v Johnson*, 103 Mich App 437, 440; 303 NW2d 26 (1981).

> permission must be secured from the "owner of the lands." Violation of this section exposes an individual to liability for three times the amount of actual damages "to the owner of the land." An exception to the treble damage requirement is carved out where the defendant had probable cause to believe that the land on which the trespass was committed was his "own." The pervasive theme throughout the legislative enactment was that one who injures the real property of another exposes himself to enhanced liability.[5]

The *Tittiger* panel's conclusion is supported by Black's Law Dictionary (8th ed),[6] which defines the term "owner" as "[o]ne who has the right to possess, use, and convey something; a person in whom one or more interests are vested." The definition also states, "[a]n owner may have complete property in the thing or may have parted with some interests in it (as by granting an easement or making a lease)." In contrast, "easement" is defined as "[a]n interest in land owned by another person, consisting in the right to use or control the land, or an area above or below it, for a specific limited purpose (such as to cross it for access to a public road)."

The current title documents pertaining to the property indicate that First of America Bank, now known as National City Bank, owns the property subject to the 60-foot easement for ingress and egress.[7] Thus, National Bank, not Alpine, is the entity with rights under the statute.[8] Because Alpine holds only the right of ingress and egress by virtue of the easement, we conclude that it is not an "owner" within the meaning of MCL 600.2919(1) and cannot enforce the statute against defendants.

In light of our holding on this issue, we need not consider defendants' remaining issues on appeal.

We reverse and remand for entry of an order granting summary disposition in defendants' favor. We do not retain jurisdiction.

/s/ William C. Whitbeck
/s/ David H. Sawyer
/s/ Kathleen Jansen

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[5] *Id*. at 441-442.

[6] See *Koontz v Ameritech Services, Inc*, 466 Mich 304, 312; 645 NW2d 34 (2002) (stating that undefined words in a statute should be accorded their plain and ordinary meanings, and dictionary definitions may be consulted in such situations).

[7] In its complaint, Alpine alleged that it owns the property on which the easement is situated. Alpine thereafter conceded that it merely owns and maintains the easement rather than the property on which the easement is located.

[8] See also *Achey v Hull*, 7 Mich 423, 429-430 (1859) ("The statute . . . is not framed to protect possessory rights, but was made to give to the owners of the fee a right to sue, in the form of trespass, for enumerated injuries . . . .").